No. 86-2002

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

Supreme Court, U.S.
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CITY OF LONG BEACH,
LONG BEACH CITY COUNCIL,
EVAN BRAUDE, WALLACE EDGERTON, JAN HALL, THOMAS J. CLARK, ERNIE KELL, RAY GRABINSKI, ED TUTTLE, and WARREN HARWOOD,
Petitioners,

VS.

AIRCAL, INC.,
AMERICA WEST AIRLINES, INC.,
DELTA AIR LINES, INC.,
and TRANS WORLD AIRLINES, INC.,
Respondents,

Ninth Circuit
U.S.D.C./C.D. CAL. NO. CV 83-4065 LEW (BX)

JOINT BRIEF OF RESPONDENTS AIRCAL, INC., DELTA AIR LINES, INC., AMERICA WEST AIRLINES, INC., AND TRANS WORLD AIRLINES, INC., IN RESPONSE TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Should this Court grant certiorari to determine whether the district court abused its discretion in modifying a preliminary injunction based on the evidence that the limits on commercial flights in the City of Long Beach's Ordinance are not reasonable or rationally related to noise concerns at Long Beach Municipal Airport, and that serious questions are raised concerning the lawfulness and constitutionality of the Ordinance?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	10
THE CITY'S PETITION FOR CERTIORARI SHOULD BE DENIED	11
A. *This Case Is Not Appropriate for Review by Writ of Certiorari*	11
B. *The District Court Did Not Abuse Its Discretion in Granting Preliminary Relief*	14
CONCLUSION	18

APPENDICES

Notice of Order of Justice O'Connor Denying Petitioners' Motion for Stay Pending Petition for Certiorari (May 4, 1987)	Appendix "A"
Memorandum Decision of the United States Court of Appeals for the Ninth Circuit Affirming Preliminary Injunction (April 14, 1987)	Appendix"B"
Order of the United States District Court for the Central District of California: 1. Establishing a Discovery Cut-off date of July 31, 1987; 2. Setting the Pre-Trial Conference for September 14, 1987 at 11:00 a.m.; 3. Setting November 10, 1987 at 9:00 a.m. as the trial date; 4. Re: Preparation for Jury Trial (April 27, 1987)	Appendix "C"

Order of the United States District Court for the Central District of California Re: The Allocation of Eight New Flights Authorized by the Court's Order of October 17, 1986 (January 15, 1987) ..... Appendix "D"

Order of the United States District Court for the Central District of California Re: City of Long Beach's Motion to Vacate the Preliminary Injunction and the Plaintiff Airlines' Motions to Modify the Preliminary Injunction (October 17, 1986) ..... Appendix "E"

Order of the United States District Court for the Central District of California Re: Preliminary Injunction (December 13, 1983) ..... Appendix "F"

Federal Aviation Administration, Record of Approval, FAR Part 150 Noise Compatibility Program, Long Beach Airport, Long Beach, California (March 27, 1987) ..... Appendix "G"

Memorandum From Dwight E. Bishop — "Noise Control Program-Run A" (excluding attached graphs and tables) (June 5, 1985) ..... Appendix "H"

Memorandum From Dwight E. Bishop — "Initial Look at Noise Impact of Jet Aircraft Takeoffs on Runway 25L" (excluding attached graphs and tables) (March 13, 1985) ..... Appendix "I"

TABLE OF AUTHORITIES

Page

Cases

British Airways Board v. Port Authority, 564 F.2d 1002 (2d Cir. 1977) (*Concorde II*) 13, 15

Brown v. Chote, 411 U.S. 452, 93 S. Ct. 1732, 36 L. Ed. 2d. 420 (1973) 14

City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d. 547 (1973) 13

Doran v. Salem, Inn, Inc., 422 U.S. 922, 95 S. Ct. 2561, 45 L. Ed. 2d 648 (1975) 14

Kassel v. Consolidated Freightways, Corp., 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 580 (1981) 13

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955) 12

Santa Monica Airport Association v. City of Santa Monica, 481 F. Supp. 927 (C.D.Cal. 1979), *aff'd,* 659 F.2d 100 (9th Cir. 1981) 16

United States v. County of Westchester, 571 F. Supp. 786 (S.D.N.Y. 1983) 16

United States v. New York, 552 F. Supp. 255 (N.D.N.Y. 1982) 16

Village of Belle Terre V. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974) 13

Statutes

49 U.S.C. § 2107 4

Cal. Pub. Util. Code § 21669 5

Regulations

14 C.F.R. §§ 150.1-150.35 3

14 C.F.R. § 150.21 4

14 C.F.R. § 150.23 4

Page

Rules

Federal Rules of Evidence Rule 201 8
Supreme Court Rule 17 11
Supreme Court Rule 28.1 1

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JOINT BRIEF OF RESPONDENTS AIRCAL, INC., DELTA AIR LINES, INC., AMERICA WEST AIRLINES, INC., AND TRANS WORLD AIRLINES, INC., IN RESPONSE TO PETITION FOR CERTIORARI

Plaintiffs in Intervention-Respondents AirCal, Inc., Delta Air Lines, Inc., America West Airlines, Inc., and Trans World Airlines, Inc.[1] ("respondents") respectfully

[1]Pursuant to Supreme Court Rule 28.1, respondents hereby inform this Court that AirCal, Inc., is affiliated with American Airlines, Inc., and that Western Air Lines, Inc. and Delta Air Lines, Inc. are now Delta Air Lines, Inc.

submit the following brief in response to the City of Long Beach's (the "City") Petition for Certiorari (the "Petition"). The City's Petition concerns an October 17, 1986, Order of the district court (the "October 17 Order") (Appendix "E"), in which the district court applied the normal balancing of hardships test involved in the grant of any preliminary relief, and modified its previous preliminary injunction regarding commercial jet departures from Long Beach Municipal Airport (the "Airport"). The October 17 Order was unanimously affirmed by the United States Court of Appeals for the Ninth Circuit on April 14, 1987. (Appendix "B"). On May 4, 1987, Justice O'Connor denied the City's request for a stay of the October 17 Order pending the filing of its Petition (Appendix "A"), and AirCal, America West, and Delta have begun service at the Airport under the district court's order. The City now asks this Court to review the October 17 Order by writ of certiorari when a trial on the merits is scheduled to begin in the district court on November 10, 1987. The preliminary nature of the district court's ruling, the absence of legal issues in the City's Petition worthy of review by this Court, the consistency with which federal courts have struck down airline flight limitations which are not rationally related to noise problems, and the sound exercise of discretion by the district court in granting preliminary relief demonstrate that the City's Petition should be denied.

STATEMENT OF THE CASE

This action for injunctive and declaratory relief against the City was filed by Alaska Airlines, Inc. on June 23, 1983. At that time the City arbitrarily limited commercial jet flights from the Airport to a maximum of 15 departures per day. The air carriers presented evidence that

the 15 flight limit unduly burdened interstate commerce and discriminated against commercial air carriers in favor of general aviation, and the Federal Aviation Administration ("FAA") filed an amicus brief in support of the air carriers' position. On July 28, 1983, the district court struck down the City's limit and granted the air carriers' motions for preliminary injunction. On December 13, 1983, the district court entered its first preliminary injunction prohibiting the City from reducing the number of commercial flights at the Airport below 18 and allocating the minimum 18 flights among commercial carriers. (Appendix "F"). The district court issued extensive findings of fact and conclusions of law in support of its December 13, 1983, order, specifically noting: (1) the irreparable harm to air carriers and the general public caused by the City's flight limit; (2) the air carriers' likelihood of success on the merits based on the evidence that the flight limit impermissibly discriminated against commercial air carriers in favor of general aviation and was not rationally related to noise concerns at the Airport; and (3) the absence of any harm to the City if the injunction were granted. (E.R. 1179-88). Despite the clear wording of the district court's order prohibiting a reduction in flights, the City unilaterally chose to construe the order as prohibiting any increase above 18 commercial jet departures per day. On that basis and on the basis that the noise situation at the Airport was "under study," the City denied any operating rights to respondents during 1983, 1984, 1985, and 1986.

In 1984, facing incontrovertible evidence that its limit on commercial flights was not rationally related to legitimate noise concerns, the City applied for and received a grant from the FAA to conduct a study in accordance with Part 150 of the Federal Aviation Regulations ("Part 150"). 14 C.F.R. §§ 150.1-150.35 (1986). These regulations provide federal assistance to airport proprietors for

the development of airport noise exposure maps and airport noise compatibility programs for submission to the FAA. 14 C.F.R. §§ 150.21, 150.23 (1986). If used properly, the Part 150 process permits airport proprietors maximum input into the regulation of noise at the local level, and gives airport proprietors limited immunity from lawsuits for airport noise if a noise compatibility program is approved, *see* 49 U.S.C. § 2107. But rather than use this process to create rational noise regulations as intended, the City used the Part 150 process to further its own goal of delaying any increase in the number of commercial flights at the Airport. In May, 1984, the City appointed a 21-person Task Force of Airport, air carrier, and community representatives to conduct the Part 150 study. Despite repeated assurances to the district court that the study would be done "shortly," the City failed to complete its portion of the Part 150 project until two years later in June, 1986.

When finally completed in June, 1986, the Task Force's Preliminary Noise Compatibility Program ("PNCP") recommended that: (1) commercial air carrier operations at the Airport be immediately increased from 18 commercial flights to 26 commercial flights per day, with an increase to 33 flights expected to follow in six months; (2) business jet operations and other general aviation flights be shifted from Runway 30 to Runway 25L; and (3) up to 41 commercial flights could be operated from the Airport

without exceeding acceptable noise levels of 65 db CNEL[2] in noise sensitive areas. *See* "PNCP," (E.R. 551-52).[3]

Consistent with the recommendations of the PNCP, an independent study conducted by Kenneth W. Orth, a noise expert for the Boeing Company, found that because of the low takeoff noise characteristics of the Boeing 737-300 aircraft which AirCal, America West, and Delta are using at the Airport, the addition of six to eight commercial flights per day will have a negligible impact on noise levels at the Airport, regardless of whether general aviation flights are shifted to Runway 25L. *See* "Affidavit of Kenneth W. Orth" (E.R. 715-16). The City's own noise expert, Dwight E. Bishop, also made several studies which support the Task Force's conclusions. In one study, Mr. Bishop found that, by simply shifting general aviation and business jet operations to Runway 25L, the City could immediately increase the number of commercial flights by ten per day without increasing current noise levels in noise sensitive areas. *See* "Noise Control Program-Run A" (Appendix "H"). In a second study, Mr. Bishop concluded that preferential use of Runway 25L by business jets and general aviation could help the City accommodate more flights without exceeding the 65 db

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[2]CNEL is the acronym for Community Noise Equivalent Level. CNEL is a noise measure used by the FAA and the State of California to evaluate total airport noise by examining noise volume and the time of day at which noise is generated. For example, noise in evening hours when people are home is given greater weight. The 65 db CNEL limit for noise sensitive areas, those areas with dwellings or other noise sensitive operations such as schools, was chosen by the Task Force because that is the limit currently imposed pursuant to Cal. Pub. Util. Code § 21669.

[3]All references to the Excerpts of Record ("E.R.") or Supplemental Excerpts of Record ("Supp. E.R.") refer to the Excerpts of Record submitted to the United States Court of Appeals for the Ninth Circuit.

CNEL noise limit in any noise sensitive areas. *See* "Initial Look at Noise Impact of Jet Aircraft Takeoffs on Runway 25L" (Appendix "I").

Rather than act on the recommendations of the Task Force and all of the experts who studied the noise question for over two years, the City subjected the PNCP to further "review." One month later, the City rejected the Task Force's recommendations in adopting the noise ordinance at issue herein on July 22, 1986 (the "Ordinance"). The Ordinance differed from the Task Force PNCP in many material respects, including: (1) a maximum of 32 daily commercial flights rather than 41 daily commercial flights recommended by the Task Force; (2) an increase of only two daily commercial flights per calendar quarter based on compliance with 65 db CNEL noise limit, as opposed to the immediate increase of eight flights recommended by the Task Force followed by an anticipated increase to 33 total daily commercial flights over the first six months of operations; and (3) the absence of any provision for shifting general aviation or business jet flights from Runway 30 to Runway 25L. *See* "Ordinance" (E.R. 58-80). The Ordinance also perpetuates the disparate treatment of commercial carriers and general aviation which the district court found objectionable in issuing the December 13, 1983, preliminary injunction, by placing tight constraints on the number of flights and the amount of noise generated by commercial carriers while failing to restrict the number of general aviation flights or the noise generated by general aviation activities. *See* "Ordinance" (E.R. 64-76).

In August, 1986, the City instigated proceedings in the district court to vacate the December 13, 1983, injunction by seeking permission to enforce the Ordinance. Respondents who would still have been denied access to the Airport under the Ordinance after three years of waiting,

contemporaneously filed motions to modify the preliminary injunction and prohibit the City from adopting the unlawful portions of the proposed Ordinance. Respondents submitted evidence to the district court establishing that, by the City's own admission, at least 32 commercial flights per day could be accommodated and that in all likelihood over 40 flights per day could be accommodated without impinging on the City's noise goals. This evidence demonstrated that the City's flight limits contained in the Ordinance were unreasonable, arbitrary, and an undue burden on interstate commerce. Furthermore, after three years of litigation, the City raised the alleged shortage of facilities for the first time in its motion to vacate the December 13, 1983, preliminary injunction. Neither the PNCP or any other study regarding additional flights at the Airport suggested that the Airport's facilities could not accommodate additional flights because of the alleged facilities constraints at the Airport.[4] Respondents submitted evidence demonstrating that the City's facilities argument was without credible factual support. *See* "Supplemental Declaration of Bruce Wetsel in Support of Motion for Preliminary Injunction" (E.R. 456-58). The FAA again filed an amicus brief in support of respondents' position in the district court. (Supp. E.R. 41-61).

After reviewing the extensive briefs and hearing oral argument, the district court enjoined the City from enforcing those portions of the Ordinance which are discriminatory or unduly burdensome on interstate commerce, and modified the 1983 injunction to increase the minimum daily commercial flights at the Airport by eight. (Appendix "E"). In reaching this conclusion, the

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[4]Six of the eight flights allocated under the October 17 Order are now in service with no indication that Airport facilities are adversely affected by the additional service.

district court considered the irreparable harm to respondents and the traveling public resulting from the City's limitation of commercial flights at the Airport and the City's continuing delays in expanding commercial carrier operations. The district court also considered the competing interests of the City and the residents surrounding the Airport in limiting the amount of noise generated at the Airport. After balancing these factors, the district court concluded that the record "clearly shows that new flight activity at the Airport is justified" and that "[a]ny further delay in this matter is unreasonable, defeats the public interest and contradicts the Congressional policy of a vibrant and competitive airline industry." (Appendix "E" at 3).

The October 17 Order invited the City to submit a proposal regarding the allocation of the eight additional flights. (Appendix "E"). On November 7, 1986, the City proposed that the new flights be provided equally to respondents, and on January 15, 1987, the district court adopted the City's proposal and allocated two of the eight additional flights to each of the respondents. (Appendix "D").

In March, 1987, the FAA determined that the noise compatibility program submitted by the City under the Part 150 process was unacceptable.[5] *See* "Record of Approval, Federal Aviation Administration, FAR Part 150 Noise Compatibility Program" (hereinafter "Record of Approval") (Appendix "G"). Specifically, the FAA found that "Long Beach's Part 150 documentation does not substantiate that a maximum number of 32 daily commer-

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[5]This final report of the FAA was submitted to the Ninth Circuit when it was released by the FAA, and is the type of government document which this Court may take judicial notice of under Fed. R. Evid. 201. The City's Petition is notably lacking any reference to this final determination of the FAA under Part 150.

cial flights is reasonably related to achieving its target 65 CNEL criterion," and that "[a] major difficulty in quantifying the impact on commerce of a proposed noise cap at Long Beach is that Long Beach's starting point; i.e., their current situation, is already a restricted air carrier operating environment." ("Record of Approval," Appendix "G" at 4, 8). The FAA also criticized the City for failing to consider less restrictive alternatives, such as eliminating incompatible land uses, before placing a limit on the number of commercial carrier flights at the Airport. ("Record of Approval," Appendix G at 2-3.)

On April 14, 1987, the Ninth Circuit unanimously affirmed the October 17 Order, finding that the district court had applied the appropriate standard in determining respondents' right to preliminary relief, and had not abused its discretion in issuing the October 17 Order modifying its original preliminary injunction. (Appendix "B").

On April 27, 1987, the district court conducted a status conference in this action, setting a trial date for November 10, 1987, a discovery cut-off date of July 31, 1987, and a pretrial conference for September 14, 1987. (Appendix "C"). Document requests and interrogatories have been served, and depositions are currently scheduled for July, 1987.

On April 29, 1987, the City moved this Court for a stay of the October 17 Order pending a ruling on its Petition for Certiorari. Justice O'Connor denied the City's motion for stay on May 4, 1987. (Appendix "A"). AirCal began service at the Airport on May 4, 1987, America West on June 1, 1987, and Delta on July 1, 1987.

SUMMARY OF ARGUMENT

The City's Petition for Certiorari should be denied. The procedural posture of this case and the mundane legal issues presented do not merit review by this Court on petition for certiorari. On October 17, 1986, the district court issued an order modifying a *preliminary* injunction. The order was unanimously affirmed by the Ninth Circuit, and Justice O'Connor denied the City's motion for stay of the district court's order pending resolution of the City's Petition. Trial is now scheduled for November 10, 1987, and discovery is proceeding. As a practical matter, this Court should not use its scarce resources to review a preliminary ruling of such limited duration. Even if certiorari were granted, and respondents strongly suggest that it should not be, the preliminary injunction would have little, if any, effect by the time meaningful review could be conducted by this Court.

As a legal matter, this case simply does not present issues which merit discretionary review by this Court. Petitioners' arguments are based upon a disingenuous view of the factual record presented to the district court, not upon any fundamental constitutional issue. Contrary to petitioners' contentions, the district court has not trampled upon legitimate local environmental concerns in the name of interstate commerce. This is a preliminary injunction case. The district court examined respondents' likelihood of success on the merits, balanced the hardships, and granted a preliminary injunction based on the overwhelming evidence that the City's restrictions on flights are not rationally related to noise considerations. Whether the district court abused its discretion in modifying a preliminary injunction based on this inquiry is not the type of issue which this Court should review by certiorari.

An examination of the merits of the October 17 Order of the district court further confirms that this case is not appropriate for review by writ of certiorari. There is no question that the district court made the appropriate inquiry into respondents' likely success on the merits and the balance of the hardships at issue. The record below demonstrates that: (1) the City's Ordinance is unreasonable, arbitrary, discriminatory, and unduly burdens interstate commerce because the Ordinance is not reasonably related to noise concerns at the Airport; (2) respondents and the traveling public were suffering irreparable injury by reason of the more than three year delay by the City in granting access to the Airport; and (3) the City will suffer no injury by reason of increased flights at the Airport, because the expert evidence and the City's own admissions indisputably establish that such flights can be accommodated without exceeding the City's noise goal of 65 db CNEL at the Airport. This record amply supports the district court's exercise of discretion. For all of the foregoing reasons, the City's Petition should be denied.

THE CITY'S PETITION FOR CERTIORARI SHOULD BE DENIED

A. This Case Is Not Appropriate For Review By Writ Of Certiorari.

Given the preliminary nature of the district court's ruling, the absence of extraordinary legal issues presented by the City's Petition for review of the preliminary injunction, and the consistent line of federal court decisions which have struck down unreasonable and discriminatory limits on commercial air carrier activity, the City's Petition should be denied. *See* Supreme Court Rule 17.

The limited duration of the preliminary relief granted by the district court makes review by certiorari impracti-

cable. The original injunction in this action prohibiting the City from reducing commercial flights at the Airport below 18 per day was issued more than three years ago. The district court modified the preliminary injunction approximately eight months ago, and increased service at the Airport under the October 17 Order began with AirCal's flights on May 4, 1987. The district court took a conservative approach in modifying the preliminary injunction, permitting an additional eight flights per day at the Airport when the evidence and the City's own admissions, *see* Petition at 8, n.8, demonstrate that *at least* 14 additional flights could be accommodated without exceeding the City's noise goals. Trial is scheduled to begin four months from now. This Court's resources should not be allocated to review a preliminary order of such limited scope and duration. *See Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74, 75 S. Ct. 614, 99 L. Ed. 897 (1955) (" 'Special and important reasons' [for granting certiorari] imply a reach to a problem beyond the academic or episodic.")

The current state of the record also militates against a grant of certiorari. Although the district court received extensive briefing and affidavits in this matter before issuing its preliminary injunction, no live testimony has yet been given. As this matter proceeds to trial, both sides will undoubtedly augment the record with further expert evidence on the issues of the burden on interstate commerce imposed by the City's flight restrictions, and the impact, if any, on noise at the Airport which will result from additional flights. The City's own failure to develop a satisfactory factual record is evidenced by the FAA's conclusion that the City failed to document the reasons for its decision to limit commercial flights at the Airport. (*See* "Record of Approval," Appendix "G" at 2).

In an attempt to conjure up legal issues which might be worthy of review by certiorari, the City erroneously argues that this case presents the "tension between the federal interest in interstate commerce and the local interest in maintaining a chosen level of environmental quality" which the City argues was addressed by this Court in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 635, 93 S. Ct. 1854, 36 L. Ed. 2d 547 (1973), Petition at 9, and incorrectly relies on police power cases such as *Village of Belle Terre v. Boraas,* 416 U.S. 1, 9, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974), to support its claim that it need not permit additional commercial flights or shift business jets to Runway 25L, *see* Petition at 16-17, 19-23.

As discussed below and found by the district court, however, respondents have demonstrated their likely success on the merits under the Commerce Clause by showing that the Ordinance is arbitrary, discriminatory, and unreasonably burdens interstate commerce. *See, e.g., British Airways Board v. Port Authority,* 564 F.2d 1002, 1010-12 (2d Cir. 1977) (*Concorde II*) (discussed below). As proprietor of the Airport the City is not asserting its police powers to regulate noise. Even if the City were asserting its police powers, its regulation of noise at the Airport would still be subject to the Commerce Clause's prohibitions against unreasonable, discriminatory, or unduly burdensome regulation of interstate commerce. *See, e.g., Kassel v. Consolidated Freightways Corp.,* 450 U.S. 662, 669-70, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981) (striking down truck length limit, which state claimed was related to its police power over safety on state freeways, because limit did not significantly impact safety and unduly burdened commerce by excluding certain trucks from the state). Thus, there are no "novel" constitutional issues as the City suggests in its Petition.

This case presents the simple question of whether or not the district court abused its discretion in evaluating the balance of hardships and respondents' likelihood of success on the merits in granting preliminary relief. The Ninth Circuit panel unanimously concluded that the district court undertook the appropriate inquiry and did not abuse its discretion in issuing the October 17 Order. There is no need for this Court to again review the district court's preliminary determination.

B. The District Court Did Not Abuse Its Discretion In Granting Preliminary Relief.

Even if certiorari were granted, this Court would review the October 17 Order only to determine if the district court applied the proper legal standard, and to determine whether the district court abused its discretion in granting preliminary relief. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32, 95 S. Ct. 2561, 45 L. Ed. 2d 648 (1975); *Brown v. Chote*, 411 U.S. 452, 457, 93 S. Ct. 1732, 36 L. Ed. 2d 420 (1973). The record before this Court overwhelmingly demonstrates that there was no abuse of discretion in the district court's interpretation or application of the preliminary injunction standard.

The district court applied the correct standard in judging respondents' requests for preliminary injunctive relief. On its face, the October 17 Order demonstrates that the district court properly considered the irreparable harm to respondents and the public, the potential for irreparable harm to the City if preliminary relief were granted, the balance of equities, and the likelihood that respondents would succeed on the merits. *See Brown v. Chote*, 411 U.S. at 456.

The record fully supports the district court's decision to grant preliminary relief under this standard. To summarize the pleadings and evidence before the district

court, respondents were suffering irreparable injury by reason of the City's restriction of commercial flights below that necessary to meet reasonable noise standards. This irreparable injury included lost revenue and the loss of the ability to compete with other carriers providing service to the Airport. *See Concorde II,* 564 F.2d at 1011-12 & n.11. The public was suffering irreparable harm from lost travel opportunities and decreased competition among air carriers. This harm to respondents and the public was exacerbated by the City's delay of over three years in addressing the problem. *See id.* at 1011-12. The City will not be irreparably harmed by the grant of preliminary relief because: (1) there will be a negligible, if any, increase in noise at the Airport and therefore no increase in potential liability by the City for noise emissions; and (2) the Airport's facilities can handle the eight additional flights with appropriate planning. These same considerations also demonstrate that the balance of the equities tips strongly in respondents' favor. While respondents and the traveling public were suffering irreparable harm during the City's unending delays, the City will suffer no harm by reason of the October 17 Order.

Respondents' likelihood of success on the merits is evidenced by the host of decisions which, contrary to the City's assertions, have struck down proprietor limitations on airport flight access which were not justified by noise emissions concerns.[6] *See, e.g., Concorde II,* 564 F.2d at

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[6]In its Petition the City erroneously implies that the district court's order "compel[s] a municipal proprietor to raise a reasonably established ceiling on maximum permissible noise in order to accommodate the interests of interstate commerce." Petition at 9. Nothing could be further from the truth. All of the evidence before the district court, and the City's own admissions, *see* Petition at 8, n.8, recognize that at least 32 and probably 41 or more flights can be accommodated at the Airport without exceeding the 65 db CNEL limit. The district

1010-12 (2d Cir. 1977) (striking down prohibition on landing of Concorde aircraft which was not related to noise concerns); *United States v. County of Westchester,* 571 F. Supp. 786, 797 (S.D.N.Y. 1983) (striking down ban on all night flights regardless of aircraft noise level when proprietor provided no data that ban was necessary to noise concerns); *United States v. New York,* 552 F. Supp. 255, 265 (N.D.N.Y. 1982) (same); *Santa Monica Airport Association v. City of Santa Monica,* 481 F. Supp. 927, 943-44 (C.D. Cal. 1979), *aff'd,* 659 F.2d 100 (9th Cir. 1981) (striking down noise provisions which were applied to jet aircraft but not propeller aircraft as arbitrary and discriminatory). The City has chosen an unreasonable and arbitrary limit of 18 commercial flights per day. Because, as the City admits, additional flights can be accommodated without exceeding the 65 db CNEL limit in noise sensitive areas, both the district court (Appendix "E"), as affirmed by the Ninth Circuit (Appendix "B"), and the FAA ("Record of Approval," Appendix "G") have recognized that the City's arbitrary limit on commercial flights is not rationally related to legitimate noise concerns.

The unreasonable and discriminatory nature of the City's rejection of all expert evidence regarding flight limits in adopting the Ordinance can best be illustrated by two examples. First, it insisted that no general aviation flights be shifted to Runway 25L. While this shift is not necessary to accommodate the 26 flights per day authorized by the district court, *see* "Orth Affidavit" (E.R. 715-16), it is typical of the City's arbitrary and unreasonable attempts to limit commercial flights at the Airport. The City suggests that this decision is based

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court's order did not raise the 65 db CNEL limit, and the evidence shows that flight activities under the preliminary injunction will not exceed this noise limit.

upon the "reasonable" decision not to shift jet noise to another "area" of the City. Petitioners do not disclose to this Court, however, that this "area" of the City is composed predominately of the San Diego Freeway and manufacturing zones surrounding that freeway. *See* "CNEL Contours For Fiscal Year 1984" (E.R. 556). Second, the City decided to leave general aviation flights which account for roughly 40% of the noise at the Airport virtually unregulated, while the City imposed flight limits and stringent noise limits on commercial carriers. It is exactly this type of irrational and arbitrary behavior on the part of the City which raised serious doubts about the Ordinance and the reasonableness of continuing to restrict commercial flights at the Airport. Thus, the City's Ordinance will be struck down because it is arbitrary and discriminatory, and because it unduly burdens interstate commerce.

CONCLUSION

For the reasons stated above, the City's Petition for Certiorari should be denied.

Dated: July 10, 1987

Respectfully submitted,

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* Counsel of Record.

APPENDIX A

Notice of Order of Justice O'Connor Denying Application for Stay Pending Petition for Writ of Certiorari

Supreme Court of the United States

Filed: May 4, 1987

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 4, 1987

John R. Calhoun, Esquire
Roger P. Freeman, Esquire
Lee L. Blackman, Esquire
Kadison, Pfaelzer, Woodard,
Quinn & Rossi
707 Wilshire Boulevard
14th Floor
Los Angeles, CA 90017

Re: City of Long Beach, et al. v. Aircal, Inc., et al., A-791

Gentlemen:

Your application for a stay pending the timely filing and disposition of a petition writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who has endorsed thereon the following:

"Denied
Sandra D. O'Connor
5/4/87"

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk

By

Christopher W. Vasil
Deputy Clerk

vjr

cc: Hon. Charles Fried, Solicitor General
John E. Gillick, Esq.
George A. Juarez, Esq.
James Perona, Esq.
William A. Masterson, Esq.
John J. Lyons, Esq.
Richard M. Sherman, Jr., Esq.
George H. King, Esq.
Robert S. Span, Esq.
Samuel A. Keesal, Jr., Esq.

APPENDIX B

Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit

Alaska Airlines, Inc., Plaintiff-Appellee v. City of Long Beach, Defendant-Appellant; Long Beach Unified School District, Defendant-Intervenor v. Pacific Southwest Airlines et al., Plaintiffs-Intervenors-Appellees; Alaska Airlines, Inc., Plaintiff-Appellee and Pacific Southwest Airlines et al., Plaintiffs-Intervenors-Appellees v. City of Long Beach, et al., Defendants-Appellants.

Ninth Circuit Nos. 86-6661, 86-6662.

Filed: April 14, 1987.

Appeal from: United States District Court, Central District of California (DC No. CV 83-4065 LEW (Bx)).

BEFORE: WRIGHT AND REINHARDT, Circuit Judges, and MUECKE**, District Judge

In 1983 the district court issued a preliminary injunction requiring the City of Long Beach, operator of the Long Beach airport, to permit a minimum of eighteen commercial flights per day in and out of the airport. Long Beach appealed from that order. At Long Beach's request, the appeal was recently dismissed, without prejudice, subject to reinstatement by this panel. In 1986, relying on a newly enacted noise abatement ordinance, Long Beach asked the district court to vacate the preliminary injunction. Plaintiffs include both air carriers who have historically used the Long Beach airport and "new entrant" carriers who have sought for some time to use the airport for commercial flights. At the same time the City of Long Beach moved to vacate the 1983 preliminary

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** Honorable C. A. Muecke, United States District Judge for the District of Arizona, sitting by designation.

injunction, the "new entrant" carriers asked the court to amend the injunction by increasing the minimum number of permitted flights. The district court refused Long Beach's request to vacate the preliminary injunction and amended that order by increasing the number of permitted flights from eighteen to twenty-six per day. The additional flights were subsequently awarded to the "new entrant" carriers. Long Beach now appeals the 1986 actions of the district court.

We review the district court's actions under an abuse of discretion standard. *Sports Form Inc. v. United Press International*, 686 F.2d 750, 753 (9th Cir. 1982). *See also Los Angeles Memorial Coliseum Com'n v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). We affirm.

In refusing to vacate the preliminary injunction, the district court concluded that serious questions were raised regarding the legality of the newly enacted noise ordinance which contained a nonseverability clause. The district court also concluded that the City had failed to formulate any plans for improvement of the airport facilities. The district court took careful note of the various interests of all parties involved, including the residents of the City of Long Beach. It also recognized the authority of city airport proprietors "to enact reasonable nonarbitrary and nondiscriminatory airport access ordinances." With respect to the request to increase the minimum number of permitted flights, the district court found that "[a]ny further delay in this matter [would be] unreasonable".

We note, preliminarily, that in issuing the 1983 preliminary injunction the district court did not abuse its discretion and applied the proper legal standards. With respect to its refusal to vacate the 1983 injunction, we conclude that the district court's action was well within its discretion. We cannot say that the district court committed a

clear error of judgment nor do we have a firm conviction that a mistake has been committed with respect to any factual matters. A decision as to the validity of the newly enacted noise ordinance must await a trial on the merits. At that time the court can carefully examine the ordinance and its effects, as well as the available alternatives, in light of *Santa Monica Airport Ass'n v. City of Santa Monica*, 659 F.2d 100 (9th Cir. 1981), and *British Airways Board v. Port Authority of New York and New Jersey*, 564 F.2d 1002 (2d Cir. 1977). Similarly, with respect to increasing the number of permitted flights, we conclude that the district court committed no legal error and acted within its discretion. The appropriate minimum number of flights to be permitted in 1987, as opposed to 1983, is a matter as to which we would hesitate to substitute our judgment for that of a district court. In reaching this conclusion we read the 1986 order in light of the findings and conclusions issued in support of the 1983 injunction.

There are two additional points we wish to note. First, our decision indicates no view as to the ultimate answer to any questions involved in this case. Our standard of review for preliminary injunctions is different from that applicable to permanent injunctions. Second, the preliminary injunction that was recently amended was issued a number of years ago. The purpose of preliminary injunctions is to ensure that the parties comply with appropriate conditions pending resolution of the case on the merits. Preliminary injunctions are not intended to be of indefinite duration. Within a reasonable time the parties should bring their dispute to trial on the merits or arrive at an appropriate settlement.

AFFIRMED.

APPENDIX C

Order of the United States District Court for the Central District of California.

Alaska Airlines, Inc., Plaintiff, Pacific Southwest Airlines, Jet America Airlines, Airserv, Air California, Western Airlines, Inc., America West Airlines, Inc., American Airlines, Inc., United Airlines, Inc., and Ozark Airlines, Inc., Plaintiffs In Intervention v. City of Long Beach, Long Beach City Council, Marc A. Wilder, Wallace Edgerton, Jan Hall, Thomas J. Clark, Ernie Kell, James Wilson, Eunice Sato, Ed Tuttle, and Warren Harwood, Defendants, Long Beach United School District, and Long Beach Hush, Inc., Defendants In Intervention.

Filed: April 27, 1987.

United States District Court, Central District of California (No. CV 83-4065 LEW (Bx)).

Order: 1. Establishing a Discovery Cut-off date of July 31, 1987; 2. Setting the Pre-Trial Conference for September 14, 1987 at 11:00 a.m.; 3. Setting November 10, 1987 at 9:00 a.m. as the trial date; 4. Re: Preparation for July Trial.

DISCOVERY CUT-OFF:

The Court has established a cut-off date for discovery in this action. All discovery is to be completed on, or prior to, the cut-off date. Accordingly, the following discovery schedule shall apply in this Court:

1. Depositions: All depositions shall be scheduled to commence at least five (5) working days prior to the discovery cut-off date. A deposition which has commenced five (5) days prior to the discovery cut-off date may continue beyond the cut-off date, as is necessary.

2. Interrogatories: All interrogatories must be served at least forty-five (45) days prior to the discovery cut-off date. The Court will not approve stipulations between counsel which permits responses to be served after the cut-off date except in unusual circumstances and upon a showing of good cause.

3. Production of Documents, etc.: All requests for production, etc., shall be served at least forty-five (45) days prior to the discovery cut-off date. The Court will not approve stipulations between counsel which permit responses to be served after the cut-off date except in unusual circumstances and upon a showing of good cause.

4. Requests for Admissions: All requests for admissions shall be served at least forty-five (45) days prior to the discovery cut-off date. The Court will not approve stipulations between counsel which permit responses to be served after the cut-off date except in unusual circumstances and upon a showing of good cause.

5. Discovery Motions: Any motion respecting the inadequacy of responses to discovery must be filed and served not later than ten (10) days after the discovery cut-off date. *The Court requires strict compliance with the requirements of Local Rule 7.15 in the preparation and filing of discovery motions.* Whenever possible, the Court expects counsel to resolve discovery problems among themselves in a courteous, reasonable, and professional manner. Consistent resort to the Court for guidance in discovery is generally unnecessary.

PRE-TRIAL CONFERENCE:

This case has been placed on calendar for a Pre-Trial Conference pursuant to F.R.Civ.P. 16 and Local Rule 9. Unless excused for good cause, each party appearing in this action shall be represented at the Pre-Trial Conference, and all pre-trial meetings of counsel, by the attorney

who is to have charge of the conduct of the trial on behalf of such party.

STRICT COMPLIANCE WITH THE REQUIREMENT OF LOCAL RULE 9 IS REQUIRED BY THE COURT. Therefore, carefully prepared Memoranda of Contentions of Fact and Law, Witness List, Exhibit List, and a proposed Pre-Trial Conference Order shall be submitted in accordance with the provisions of Local Rules 9.5 through 9.8 and the form of the proposed Pre-Trial Conference Order shall be in conformity with the format set forth in the Appendix to Local Rule 9.

The Memoranda of Contentions of Fact and Law are due twenty-one (21) days before the Pre-Trial Conference and the proposed Pre-Trial Conference Order is to be lodged seven (7) days before the Pre-Trial Conference.

TRIAL PREPARATION FOR JURY TRIAL — INSTRUCTIONS AND EXHIBITS:

THE COURT ORDERS that counsel comply with the following in their preparation for trial:

Thirty-five (35) days before trial, plaintiff shall serve his proposed jury instructions on defendant. Twenty-eight (28) days before trial defendant shall serve on plaintiff, his objections to plaintiff's instructions together with an [sic] additional instructions defendant intends to offer. Twenty-one (21) days before trial, counsel are ordered to meet and confer to attempt to come to agreement on the proposed jury instructions.

Fourteen (14) days before trial counsel shall file with the Court a JOINT set of jury instructions on which there is agreement. Defendant's counsel has the burden of preparing the joint set of jury instructions. At the same time, each party shall file its proposed jury instructions

which are objected to by any other party, accompanied by points and authorities in support of those instructions.

Seven (7) days before trial counsel are to file points and authorities supporting their objections to any other parties' proposed jury instructions.

The Court prefers the use of Devitt & Blackmar instructions as modified or supplemented to fit the circumstances of this case. Each requested instruction shall be set forth in full; be on a separate page; be numbered; cover only one subject or principle of law; not repeat principles of law contained in any other requested instructions; and cite the authority for a source of the requested instruction.

During the trial and before argument, the Court will meet with counsel and settle the instructions plus any others deemed warranted by unexpected developments during the course of the trial.

Counsel are to *prepare their exhibits* for presentation at the trial by placing them in volumes which are tabbed down the side or across the bottom with the exhibit numbers. These volumes are to be prepared in an original and three copies. Each volume of exhibits shall be bound across the top with an Acco type fastener and contain a list of each exhibit included in the volume. Counsel shall also supply two extra copies of their exhibit list to the Clerk at the start of trial. The exhibits are to be numbered in accordance with Local Rule 8.

All counsel are to meet not later than ten (10) days before trial and to stipulate as far as is possible as to foundation, waiver of the best evidence rule, and to those exhibits that may be received into evidence at the start of trial. The exhibits to be so received will be noted on the extra copies of the exhibit lists.

The Clerk is ordered to serve a copy of this order by mail on all parties to this action.

DATED _____

_____

LAUGHLIN E. WATERS
United States District Judge

APPENDIX D

Order of the United States District Court for the Central District of California.

Alaska Airlines, Inc., Plaintiff, Pacific Southwest Airlines, Jet America Airlines, Airserv, Air California, Western Airlines, Inc., America West Airlines, Inc., American Airlines, Inc., United Airlines, Inc., and Ozark Airlines, Inc., Plaintiffs In Intervention v. City of Long Beach, Long Beach City Council, Marc A. Wilder, Wallace Edgerton, Jan Hall, Thomas J. Clark, Ernie Kell, James Wilson, Eunice Sato, Ed Tuttle, and Warren Harwood, Defendants, Long Beach Unified School District, and Long Beach Hush, Inc., Defendants In Intervention.

Filed: January 15, 1987.

United States District Court, Central District of California (No. CV 83-4065 LEW (Bx)).

Order Re: The Allocation of Eight New Flights Authorized by the Court's Order of October 17, 1986.

On October 17, 1986, this Court filed an Order denying the motion of the City of Long Beach to vacate this Court's preliminary injunction of December 9, 1983 and granting the plaintiff airlines' motions to modify that injunction. The Court ordered an increase of eight (8) daily flights at Long Beach Airport and invited the City, the airlines, and interested parties to submit proposals concerning the allocation of those flights. On January 5, 1987, a hearing was held to consider the allocation strategies proposed by the parties, and the Court subsequently took the matter under submission. After considering the papers submitted in connection with the matter and the arguments of the parties at the hearing, the Court finds as follows.

In its proposal regarding the allocation of the new flights, the City determined that all eight (8) daily flights should be allocated to new entrant air carriers AirCal, Western, America West, and Ozark. The City further determined that flights should be allocated in groups of two. Such a preferential allocation in favor of the new entrants comports with the Congressional policy of increasing competition in the airlines industry. 48 U.S.C. § 1302. The City formulated its allocation plan after examining the competing interests of the various parties in this litigation. The plaintiff airlines and the Federal Aviation Administration agree with the City that the new entrant carriers should receive a preference with respect to the allocation of the eight (8) new daily flights. Despite the arguments made by parties which have recently joined this litigation as *amicus curiae*, this Court cannot conclude that the City's proposal is arbitrary, unreasonable, unlawfully discriminatory, or in violation of its administrative authority as proprietor of the airport. *Santa Monica Airport Association v. City of Santa Monica*, 481 F. Supp. 927 (C.D. Cal. 1979), *affirmed*, 659 F.2d 100 (9th Cir. 1981).

Accordingly, it is hereby ordered that the preliminary injunction of December 9, 1986 is modified such that pending trial in this matter and in the absence of a reasonable and non-discriminatory plan governing access to Long Beach Airport, the City of Long Beach is enjoined from directly or indirectly reducing the daily flights operated by the air carriers below the numbers provided herein:

Alaska Airlines	3
PSA	4
Jet America	6
American Airlines	3
United Airlines	2
Western Airlines	2

AirCal	2
America West	2
Ozark Airlines	2

It is further ordered that the above allocations must be operated with Stage III aircraft as defined in 14 C.F.R. Part 36.

It is further ordered that the City present to this court a rational plan for use of airport facilities to accommodate the eight (8) new daily flights by January 26, 1987. The City shall implement the Court-ordered flight schedule no later than March 1, 1987.

IT IS SO ORDERED.

Dated: January 15, 1987

Laughlin E. Waters
Sr. United States
District Judge.

APPENDIX E

Order of the United States District Court for the Central District of California.

Alaska Airlines, Inc., Plaintiff, Pacific Southwest Airlines, Jet America Airlines, Airserv, Air California, Western Airlines, Inc., America West Airlines, Inc., American Airlines, Inc., United Airlines, Inc., and Ozark Airlines, Inc., Plaintiffs In Intervention v. City of Long Beach, Long Beach City Council, Marc A. Wilder, Wallace Edgerton, Jan Hall, Thomas J. Clark, Ernie Kell, James Wilson, Eunice Sato, Ed Tuttle, and Warren Harwood, Defendants, Long Beach Unified School District, and Long Beach Hush, Inc., Defendants In Intervention.

Filed: October 17, 1986.

United States District Court, Central District of California (No. CV 83-4065 LEW (Bx)).

Order Re: City of Long Beach's Motion to Vacate The Preliminary Injunction And The Plaintiff Airlines' Motions To Modify The Preliminary Injunction.

The City of Long Beach's motion to vacate the preliminary injunction of December 9, 1983 and the motions by AirCal, Western, America West, United, Jet America and Alaska to modify that injunction came on for hearing on September 8, 1986. After oral argument, the Court denied the City's motion and took the airlines' motions under submission. The Court has considered all of the papers submitted in connection with this matter and has considered the arguments made by counsel at the hearing. The Court hereby grants the airlines' motions to modify the preliminary injunction and orders an increase of (8) daily flights at Long Beach Airport — from the current total of eighteen (18) daily flights to twenty-six (26) daily flights.

As a preliminary matter, the Court recognizes the diversity of interests involved in this case. The residents of the City of Long Beach seek to minimize the volume and number of noise intrusions by airplanes serving the airport. Those interests clash with the airlines' goal of increasing the number of flights at the airport. To complicate matters, the air carriers themselves differ as to how such additional flights should be allocated. AirCal, Western, America West and Ozark — the "new entrants" — seek to institute service at Long Beach Airport, an opportunity the City has persistently denied them during the course of this litigation. Allocating flights to the new entrants, they point out, furthers the policy stated in the Airline Deregulation Act of 1978, 48 U.S.C. § 1302, of increasing competition in the airline industry. The City acknowledges the new entrants' point in the most recent noise compatibility ordinance, which provides for the preferential allocation of new flights to the new entrants.

Conversely, the airlines presently serving Long Beach Airport request that any additional flights be granted to them. They contend that, like the new entrants, they too have patiently awaited the flight increases. Moreover, they argue that their flight allotment should be increased in return for the business risk they undertook in establishing service at the airport.

The interest of the general public must also be considered. The welfare of the Long Beach residents demands a well-planned growth policy at the airport. Such a growth policy must also account for the public's interest in a vibrant national transportation system — a linchpin of our national system of commerce.

The Long Beach City Council has the formidable job of balancing these diverse interests. As political representatives of the city and proprietors of the airport, they are answerable politically to city residents and responsible

legally for lawsuits brought due to excessive noise. In addition, they must attend to the interest of the airlines, the public and the national commercial system. The courts, recognizing these responsibilities, have granted city airport proprietors the power to enact reasonable, non-arbitrary and non-discriminatory airport access ordinances. *Santa Monica Airport Ass'n. v. City of Santa Monica*, 481 F. Supp. 927 (C.D. Cal. 1979), *aff'd*, 647 F.2d 3 (9th Cir. 1981).

Upon careful consideration, the Court finds that the record raises serious questions as to the reasonableness and fairness of the City's program to limit growth at Long Beach Airport. These questions are amplified by the City's failure to formulate a plan for improvement of airport facilities after almost two years of studying the airport access problem. Thus, the Court denies the City's motion to vacate the injunction and enact its new airport access ordinance.

The Court further orders an increase of eight (8) daily flights at the Long Beach Airport. The record clearly shows that new flight activity at the airport is justified. Even the City concedes in its new ordinance that a total of thirty-two (32) daily flights can be accomodated at the airport. Moreover, the Part 150 study task force — a City-appointed group that extensively studied the issues of noise and access — recommended that a total of forty-one (41) daily flights could be handled. While an FAA review of the task force recommendations would add another objective analysis to the voluminous data, such a study would also add *at least* another six months of delay to this protracted litigation. Any further delay in this matter is unreasonable, defeats the public interest and contradicts the Congressional policy of a vibrant and competitive airline industry.

The City is invited to submit a proposal as to the method of allocation of these additional eight (8) daily flights. Such a proposal should address the interests aforementioned in this Order and be submitted by November 7, 1986. Upon receipt of the City's recommendations, comments will be solicited from all interested parties.

IT IS SO ORDERED

DATED: October 17, 1986

LAUGHLIN E. WATERS
Sr. United States
District Judge

APPENDIX F

Order of the United States District Court for the Central District of California.

Alaska Airlines, Inc., Plaintiff, Pacific Southwest Airlines, Jet America Airlines, Airserve, Air California, Western Airlines, Inc., America West Airlines, Inc., American Airlines, Inc., United Airlines, Inc., and Ozark Airlines, Inc., Plaintiffs In Intervention v. City of Long Beach, Long Beach City Council, Marc A. Wilder, Wallace Edgerton, Jan Hall, Thomas J. Clark, Ernie Kell, James Wilson, Eunice Sato, Ed Tuttle, and Warren Harwood, Defendants, Long Beach Unified School District, and Long Beach Hush, Inc., Defendants In Intervention.

Filed: December 12, 1983

United States District Court, Central District of California (No. CV 83-4065 KEW (Bx)).

Order Re: Preliminary Injunction.

Upon consideration of the Motions for Preliminary Injunction brought by Alaska Airlines, Inc., Pacific Southwest Airlines, Inc. and Jet America Airlines, Inc., and the Court being fully advised in those matters, it is hereby ORDERED that the Motions be and further are granted and it is further ORDERED that pending trial in this matter and in the absence of a nonexclusive, nondiscriminatory plan governing access to Long Beach Municipal Airport, the City of Long Beach is enjoined from

directly or indirectly reducing the daily flights flown by the air carriers below the numbers set forth herein:

Alaska Airlines	3
PSA	4
Jet America	6
American Airlines	3
United Airlines	2

Entered this 9th day of December, 1983.

LAUGHLIN E. WATERS
United States District Judge

APPENDIX G

Federal Aviation Administration Record of Approval, FAR Part 150 Noise Compatibility Program, Long Beach Airport, Long Beach, California.

Date: March 27, 1987.

RECORD OF APPROVAL

LONG BEACH AIRPORT
NOISE COMPATIBILITY PROGRAM

PRINCIPLES

1. Long Beach Airport should only be used by Stage 3 (or equivalent) aircraft, of a size not to exceed the rated runway parameters.

Disapproved. The designation of aircraft equipment permitted at Long Beach Airport under its Part 150 program is directly related to the establishment of acceptable single-event limits which are supported by adequate analysis and meet Part 150 standards. FAA has disapproved Long Beach's proposed SENEL limits for reasons stated under Element 12.B-1. Also noted under Element 12.B-1 is that FAA is not, by virtue of its disapproval, opposing the concept of single-event noise limits at Long Beach so long as those limits are supported by adequate analysis, satisfy the standards for approval under Part 150, and are administered in a manner consistent with aviation safety. Whether or not acceptable noise limits at Long Beach airport would translate into "Stage 3 (or equivalent) aircraft" remains to be documented by Long Beach.

2. 65 CNEL should be adopted as the critical noise level in conformance with state law as recommended by the Task Force. No operations should be permitted which would have the effect of exposing incompatible land use outside the airport to greater than this noise level.

Disapproved. The FAA does not take issue with Long Beach's target goal of attaining compatibility of land uses within the 65 CNEL contour. This is also the goal, to the extent possible, expressed in the DOT/FAA Aviation Noise Abatement Policy of 1976 and in FAR Part 150. Rather, FAA's disapproval is based on Long Beach's selected means of achieving this goal coupled with the lack of adequate analytical support in its Part 150 documentation.

Long Beach's selected means of achieving its goal is to prevent aircraft operations from exposing noncompatible land uses outside the airport to greater than 65 CNEL. There is no corresponding constraint on land uses in terms of eliminating existing noncompatible land uses and preventing the introduction of additional noncompatible land uses within the 65 CNEL. In other words, the burden of attaining Long Beach's target goal falls entirely on air commerce. This was, to the best of FAA's knowledge, a guiding principle of Long Beach's Part 150 study from its initiation, and this predetermined outcome was not subjected to sufficient analysis to make an informed judgment on the burden on interstate commerce or to satisfy the Part 150 standard of meeting both local needs and needs of the national air transportation system, to the extent practicable, considering tradeoffs between economic benefits derived from the airport and the noise impact.

Long Beach's Part 150 analysis attempts to address noncompatible land use impacts and costs (in terms of the number of dwellings significantly impacted and the

financial cost of reducing that impact through sound attenuation) for selected 65 CNEL contour locations, but does not include a corresponding impact and cost analysis with respect to air commerce. Within the 65 CNEL of Long Beach's current noise exposure map submitted to FAA under Part 150 in July 1986 (although prepared based on 1984 data), Long Beach estimates an impact of 1,586 dwelling units and a potential sound attenuation cost of $6.7 million. Since, at the time this noise exposure map was prepared, Long Beach Airport had, and continues to have, in place a significant restriction on the number of air carrier operations permitted at the airport, it is already placing a burden on air commerce. However, Long Beach's Part 150 program does not address the commerce impacts of simply maintaining that 65 CNEL contour in its location as presented in the July 1986 map so that commerce benefits and impacts could be judged and could be compared to noise impacts and mitigation costs. Similarly, for the critical 5-year forecast map also submitted to FAA under Part 150 in July 1986, which is based on implementation of Long Beach's Part 150 program, the number of dwellings and the potential sound attenuation costs within the 65 CNEL are zero; however, there is no adequate analysis of the impacts on commerce and on economic benefits derived from the airport of achieving a zero land use impact. It cannot be assumed that there would be no impacts on commerce simply because Long Beach proposes to allow an increase in the number of daily air carrier flights from 18 to 32, while shrinking the 65 CNEL contour due to service by quieter aircraft and noise abatement procedures. Long Beach's Part 150 documentation indicates that its proposed 32 daily air carrier flights will still translate into the airport's accommodating less than 2.5 million annual passenger demand forecast by its consultant for 1990. Between 1990 and 2000, FAA has roughly estimated that the gap

between passenger demand and passengers accommodated at Long Beach Airport is likely to double if Long Beach's recommendation is approved.

A major difficulty in quantifying the impact on commerce of a proposed noise cap at Long Beach is that Long Beach's starting point; i.e., their current situation, is already a restricted air carrier operating environment. In this type of situation, any permitted growth may appear to be a relief for air commerce, rather than a burden. For their Part 150 effort, FAA encouraged Long Beach to analyze an unrestricted environment at the airport for comparative purposes. Long Beach's response within the Part 150 study is its problem definition case showing the airport serving 8.7 million annual passengers, which was translated into approximately 125 air carrier flights a day. Under this scenario within Long Beach's Part 150 program which assumes unrestricted airport use based on theoretical runway capacity and no noise abatement actions, 18,100 dwelling units would be impacted within the 65 CNEL contour involving a potential sound attenuation cost of $146 million (sound attenuation costs are the only costs estimated by Long Beach's program). The burden on commerce would be nonexistent since 8.7 million annual passengers would be almost twice the number roughly projected by FAA to utilize an unrestricted Long Beach Airport by the year 2000. This "worst case scenario" is the only one within Long Beach's Part 150 study in which the FAA is able to see a commerce/noise impact comparison. This worst case is not a noise scenario which either the City or FAA desires for Long Beach Airport, and it is not a particularly useful comparative alternative. FAA believes that Long Beach either ignored or gave short shrift to other reasonable comparative alternatives.

The FAA is not, by virtue of this disapproval, opposing the concept of a target 65 CNEL noise contour at Long Beach Airport so long as it is supported by adequate analysis and meets the standards for approval under part 150. In addition to further analysis with respect to air commerce to correct the deficiencies noted above, the FAA recommends that Long Beach include a balanced, comparative analysis for other reasonable alternatives including (but not necessarily limited to) splitting the 65 CNEL contour difference between the current and 5-year forecast noise exposure maps which would result in noise benefits to the community with less apparent impact on commerce than the 5-year map 65 CNEL contour; and include a balanced, comparative analysis for the alternatives of meeting reasonable forecast passenger demand levels for the years 1990, 1995, and 2000. The FAA is available to work cooperatively with Long Beach to develop and analyze alternatives with the goal of producing a recommendation which would be approvable under Part 150.

This disapproval only relates to FAA determinations under FAR Part 150 and to the standards expressed in that regulation.

3. Within the ability of the city, the hourly density of scheduled airline and other flights using transport category and similar noise level aircraft, should be minimized.

Disapproved. The hourly density of flights is not reasonably related to the reduction of noise over noncompatible land uses when considered either on a cumulative basis (CNEL) or a single-event level (SENEL). Absent information which indicates a relationship between the hourly density of flights and its impact on noise, safety,

congestion, and commerce, it appears that it is not within the authority of the city to carry out such a policy.

4. Airport Federal funds (consistent with City Council policy) should be used to minimize the noise impact on the community.

Approved, subject to applicable Federal laws with respect to the expenditure of revenues generated by the airport. With respect to Federal funds, 150.5(b) states that approval of a noise compatibility program is neither a commitment by FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from FAA. Specific applications for Federal aid must meet all applicable regulations, directives, and guidelines.

ELEMENTS

1. In each quarter that the 65 CNEL noise level is exceeded, a noise reduction in flight activity in proportion to noise contribution by each user group will occur. For scheduled carriers, there will be a reduction of 2 flights from the carrier with the highest average noise level. With other users, elimination of the noisiest aircraft will occur.

Disapproved. A predetermined reduction in the number of flights is not necessarily reasonably related to the goal of maintaining a particular criterion noise level since different aircraft produce different noise levels. In the case of Long Beach Airport, the basis for establishing their proposed criterion noise level was not adequately analyzed or supported in their Part 150 documentation, as described in FAA's determination on Principle 2. Neither is there technical information in the Part 150 program to support the proposal to reduce by two air

carrier flights in any quarter in which the 65 CNEL has been exceeded. Furthermore, the Part 150 documentation fails to address impacts on interstate commerce from the elimination of flights from a market which is presumed in Long Beach's Part 150 program to be already restricted to a maximum of 32 daily flights.

2. In each quarter that the 65 CNEL criterion noise level is within the boundaries of compatible land use, up to 2 flights will be added. Each increment of up to 2 flights shall only go to one operator. Incremental flights shall be awarded with preference to new entrants. On an annual basis, City Council shall review reasonableness of timing and magnitude of increments.

Disapproved. A predetermined addition to the number of flights is not necessarily reasonably related to achieving a particular criterion noise level since different aircraft produce different noise levels. Long Beach's Part 150 documentation does not substantiate the reasonableness of restricting flight increases to two per quarter relative to its presumed 65 CNEL criterion noise level, which is also disapproved for reasons stated under Principle 2. Furthermore Long Beach's proposal, as FAA understands it, to dole out increases in increments of two flights per quarter, would require seven quarters to go from their present level of 18 flights to their proposed criterion noise level of 32 flights. Preventing timely use of a substantial portion of Long Beach's presumed number of available flights within their proposed criterion noise level is unreasonable, arbitrary and capricious, and may constitute a burden of interstate commerce. Long Beach's Part 150 documentation does not analyze the potential burden on commerce in this regard.

3. There shall be a maximum of 32 daily scheduled commercial airline flights pending a further review within one year by the City Council regarding the issue of frequency of noise intrusions.

Disapproved. Assuming that a particular criterion noise level would be acceptable, it would still not be acceptable for Long Beach to predetermine the maximum number of flights available to the air carriers to meet that criterion. Different aircraft produce different noise levels. Long Beach's number of 32 flights is based on their calculation of numbers of MD-80 and B-767 aircraft that could be accommodated within their proposed criterion noise level, using an aircraft mix of 90 percent MD-80's and 10 percent B-767's. However if, for example, BAE-146 type aircraft were substituted for either MD-80 or B-767 aircraft, the number of flights that could be accommodated within the same criterion noise level would be greater than 32. Long Beach's Part 150 documentation does not substantiate that a maximum number of 32 daily flights is reasonably related to achieving its target 65 CNEL criterion, even if that criterion were acceptable. FAA's disapproval of that criterion as proposed by Long Beach is addressed under Principle 2, including FAA comments with respect to Long Beach's lack of adequate analysis within its Part 150 program on the impact on interstate commerce of establishing a maximum ceiling on airport operations.

4. A monetary fee structure for SENEL (single event noise level) violations, the severity of which would provide for a significant deterrent (an initial warning, then $3,000 for the 2nd violation, then $5,000 for the 3rd violation within any one year period), shall be implemented.

Disapproved. The FAA opposes the use of an in situ SENEL measurement for reasons of aviation safety. Aircraft pilots attempting to achieve a lower SENEL value as they fly over a monitoring station may engage in aircraft maneuvers which are detrimental to safety. FAA's safety concerns in this regard are increased by the proposed imposition of severe financial penalties which will further encourage pilots to attempt to "beat the box." Additionally, the use of in situ SENEL measure it combined with a financial penalty system is unreasonable because the noise created by individual flyovers by the same pilot in the same aircraft is not subject to reasonable reproducibility because of extraneous factors affecting a "noise event" beyond the control of the pilot, including temperature, humidity, cloud cover, and other atmospheric conditions.

5. More stringent nighttime SENEL limits will be effective between the hours of 10:00 p.m. – 7:00 a.m. as opposed to current nighttime limit enforcement hours of 10:30 p.m. – 7:00 a.m.

Disapproved. FAA's objections to in situ SENEL measurement are described under Element 4. Specifically with respect to Long Beach's proposed time extension, there is not sufficient information in the Part 150 program to permit an informed analysis under Section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. Based on Long Beach's documentation, the FAA is unable to determine the benefit of the proposed measure in terms of reduction of noise over noncompatible land uses. Long Beach's Part 150 documentation refers to a resulting "relatively small impact on CNEL values" and states that there are not accurate records of the existing number of operations occurring between 10:00 p.m. and 10:30 p.m. In addition, FAA is unable to determine from Long Beach's documentation whether there would be an

undue burden on interstate commerce because of the absence of the information on benefits versus impacts on aviation users. FAA is aware that a broadening of the "curfew hours" from 10:30 p.m. to 10:00 p.m. would eliminate the half-hour "grace period" allowed to the air carriers who, by informal agreement, schedule arrivals and departures before 10:00 p.m. There is a general statement in Long Beach's documentation that extension of the "curfew hours" would probably necessitate considerable adjustment of airline schedules; however, FAA has been unable to locate any analysis in Long Beach's program that provides a more definitive understanding of the impact on the carriers or other users.

6. A landing and departure fee for all aircraft operations between the hours of 10:p.m. – 7:00 a.m. the amount of which would be in proportion to the community annoyance factor in CNEL calculation (10 times daytime landing fee for equivalent aircraft) shall be implemented.

Disapproved, pending submission to FAA under Part 150 of sufficient information to permit an informed analysis under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. While the concept of noise-based operating fees may be acceptable under Part 150, Long Beach's Part 150 documentation has not shown that the imposition of nighttime noise-based landing and departure fees is reasonably related to the goal of reducing noise over noncompatible land uses when considered in conjunction with other proposed measures in Long Beach's program which, if approved as proposed, would contain the 65 CNEL contour so that there would be no noncompatible land uses and would further impose nighttime SENEL limits that would eliminate all except single-engine low performance aircraft from the airport at night.

Long Beach's proposal as stated is also technically flawed. The proposal is for a nighttime fee equal to 10 times a daytime fee "in proportion to the community annoyance factor in CNEL calcuation." The factor referred to actually reflects that the CNEL methodology penalizes nighttime aircraft operations by 10 dB to balance the generally assumed nighttime ambient noise level of 10 dB lower than the daytime level. However, 10 dB represents twice the perceived loudness of a daytime noise event, not ten times the perceived loudness or annoyance, and therefore a multiplying factor of only 2. While it is not FAA's intention to make detailed judgments under Part 150 with respect to proposed fee structures, there must be adequate information in a Part 150 program supporting the reasonableness of proposed noise-based fees in relation to the aircraft noise generated as well as to the goal of reducing noise/noncompatible land uses.

7. Regarding preferential runway use, the FAA should be asked to allocate runway use so that no neighborhoods would be exposed to a greater airport-related CNEL than is currently the case. This would preclude use of Runway 25L by most business jets.

Disapproved. The goal of this measure is dependent upon an acceptable CNEL criterion noise level. FAA has disapproved Long Beach's proposed target 65 CNEL noise criterion for reasons stated under Principle 2. Element 7 cannot be acted on by FAA under Part 150 absent resolution of Principle 2. FAA also notes that whether or not particular aircraft would be allowed to use Runway 25L for noise reasons should depend on their conformance with an acceptable CNEL criterion noise level for the airport or with acceptable single-event noise limits on that runway, not on whether the aircraft are business jets.

8. The City should, using airport and/or Federal funds, embark on a pilot public building acoustical treatment program.

Approved, subject to applicable Federal laws with respect to the expenditure of revenues generated by the airport. With respect to Federal funds, 150.5(b) states that approval of a noise compatibility program is neither a commitment by FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from FAA. Public buildings located in areas below 65 CNEL are already considered compatible under Part 150 land use guidelines (Table 1 of Appendix A) and would not be eligible for Federal aid.

9. Nighttime SENEL limits which would preclude the airport's use by aircraft which have historically caused community disruption during nighttime hours should be developed and implemented.

Disapproved. While the recommendation indicates that a nighttime limit *should* be developed and implemented ([italics] added), it is FAA's understanding based on Long Beach's Part 150 documentation that a proposed nighttime limit of 79.0 SENEL for Runway 12/30 has already been developed by Long Beach and included in a proposed local ordinance. The FAA disapproves the use of an in situ SENEL measurement for reasons addressed in response to Element 4. The FAA also disapproves this proposed measure with respect to Long Beach's selection of their nighttime limit based on insufficient information to permit an informed analysis under Section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. FAA is unable to determine from Long Beach's documentation the contribution of the lowered nighttime limit to the goal of reducing noise over noncompatible land uses (i.e., how many individuals or

households would be benefitted). FAA is unable to determine from the documentation the impact on interstate commerce caused by excluding from Long Beach Airport 41 percent of the present night operations. FAA considers the methodology used by Long Beach also to provide grounds for disapproval because it was not adequate to produce a nighttime limit that is not subject to being arbitrary and capricious. Long Beach apparently reviewed nighttime noise complaints at the airport over a 5-month period (January-May 1984) and, on the basis of an extremely small number of nighttime complaints, established a limit to eliminate "obstrusive noise" with no further analysis provided such as to correlate noise levels with sleep interference or other annoyance criteria (although there is some discussion of sleep interference in Long Beach's documentation). Additionally, there are statements in Long Beach's Part 150 documentation that the existing nighttime limits effectively limit nighttime intrusions and that there is no basis on which to set new limits.

The FAA is not, by virtue of this disapproval, opposing the concept of single-event noise limits at Long Beach so long as those limits are supported by adequate analysis, meet the standards for approval under Part 150, and are administered in a manner so that aircraft are pre-identified as meeting or not meeting the limits (as occurs when using a dBA limit and applying FAA Advisory Circular 36-3D, "Estimated Airplane Noise Levels in A-Weighted Decibels"), instead of relying on individual pilot/aircraft performance in flight.

10. There should be no variances granted from the requirement to pay established late night operating fees, pursuant to elements #4, #5, and #6 above.

Disapproved. Implementation of this measure is dependent upon the implementation of Elements 4, 5, and 6, which are disapproved.

11. FAA should contribute towards noise compatibility by:

(a) Revising or eliminating the existing approach to Runway 12.

(b) Not permitting practice ILS approaches.

(c) Restricting traffic pattern size when warranted due to noise abatement.

(a) *Disapproved.* FAA understands this item to refer to the circling approach to Runway 12 under actual or simulated instrument flight conditions after an initial instrument approach to Runway 30. As stated in Long Beach's Task Force findings, this circling approach is necessary to keep the airport open during certain weather/wind conditions. Because of airspace limitations, it is not possible to have a precision approach to Runway 12 and thereby avoid the circling approach.

(b) *Disapproved.* In the interest of safety, practice ILS approaches are a vital aid in maintaining pilot proficiency. There is also no indication from Long Beach's documentation that practice approaches are noisier than other approaches. FAA also notes that this proposed measure is not consistent with Element F-1, which recommends that flight training/practice should not be prohibited.

(c) *Disapproved.* It would not be possible to restrict the size of the traffic pattern. The size of the pattern is directly related to the different characteristics of the aircraft operating in the pattern. This proposed measure would adversely affect the safe and efficient use of airspace.

12. Implement the following Part 150 Task Force recommendations:

A-2 Implement additional noise monitoring locations as appropriate, including locations at the nearest residential area off the ends of Runway 30/12.

Approved. There are a number of useful purposes for noise monitoring equipment. For reasons of aviation safety, this approval does not extend to the use of such equipment for enforcement purposes by in situ measurement of SENEL.

B-1 Implement aircraft single event noise limits which would prohibit noisier business jets, B-727s, heavily loaded DC-10s, and other aircraft generating similar noise levels.

Disapproved. The FAA disapproves the use of an in situ SENEL measurement for reasons of aviation safety, as previously described in response to Element 4. The FAA also disapproves this proposed measure with respect to the SENEL limits selected by Long Beach based on insufficient information to permit an informed analysis under Section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. There is conflicting information within Long Beach's Part 150 documentation regarding the need to set lower SENEL limits in order to meet their noise/land use goals, and FAA is unable to determine the contribution of the limits to the program (i.e., how many individuals or households would be benefitted). The limits are also suspect as being arbitrary and capricious because of the methodology used — i.e., consideration of noise complaints and consideration of aircraft types, rather than some correlation with noise interference of community/household activity. The FAA is unable to determine from Long Beach's documentation the impact on commerce with respect to airport users which are not air

carriers. The documentation does indicate that approximately 10 percent of the air carrier operations at Long Beach (MD-BO's at high gross weights) would violate the proposed daytime SENEL limits. In view of the analytical inadequacies supporting the noise/land use benefits and reasonableness of the SENEL limits and within the context of Long Beach's overall proposed Part 150 program which, if approved, would include no noncompatible land uses within the 65 CNEL, the FAA finds that the burden on interstate commerce (to the extent it can be determined from the documentation) would be unjustified and undue.

The FAA is not, by virtue of this disapproval, opposing the concept of single-event noise limits at Long Beach so long as those limits are supported by adequate analysis, meet the standards for approval under Part 150, and are administered in a manner so that aircraft are pre-identified as meeting or not meeting the limits (as occurs when using a dBA limit and applying FAA Advisory Circular 36-3D, "Estimated Airplane Noise Levels in A-Weighted Decibels"), instead of relying on individual pilot/aircraft performance in flight.

C-1 All aircraft operators should maximize noise abatement procedures where possible.

Disapproved, pending submission to FAA under Part 150 of sufficient information to permit an informed analysis under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. FAA cannot determine from Long Beach's documentation which specific noise abatement procedures are included within this recommendation.

C-3 Where possible, aircraft departing Runway 25L should maintain runway heading until reaching an altitude of 1,500 ft. or the L.A. River.

Approved. This procedure is approved subject to the caveats that FAA Air Traffic Control determines when the procedure is appropriate and that the procedure does not apply to aircraft staying in the traffic pattern, which is at an altitude of 1,000 feet.

C-4 Industrial engine runups should be restricted to the hours of 7:00 a.m.-9:00 p.m. (weekdays) and 9:00 a.m.-9:00 p.m. weekends/holidays.

Approved.

C-5 Where possible, multi-engine aircraft should use full length of runways when departing.

Disapproved. Long Beach's Part 150 documentation indicates that the city has included this recommendation with some revision in a proposed local ordinance. The proposed ordinance states that *all* multi-engine aircraft *shall* use the full length of runways when departing ([italics] added). This is an area of responsibility that is Federally preempted and is, therefore, not within the bounds of authority of local government.

FAA is willing to work closely with Long Beach to determine whether the objectives of this measure can be obtained consistent with Federal responsibilities.

D-1 Landing fee structures should provide for differentials based on certificated aircraft noise level of aircraft and time of landing (day, evening, night).

Disapproved, pending submission to FAA under Part 150 of sufficient information to permit an informed analysis under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. While the concept of noise-based operating fees may be acceptable under Part 150, Long Beach's Part 150 program has not adequately documented that the imposition of such fees and the proposed amounts of the fees (which FAA could not locate in Long

Beach's documentation) bear a reasonable relationship to either the aircraft noise generated or to the goal of reducing noise over noncompatible land uses within the context of Long Beach's other proposal to contain the 65 CNEL so that it would include no noncompatible land uses.

E Military and public aircraft should be included in the calculation of cumulative (CNEL) aircraft noise levels.

Approved, with the caveat that this apprvoal does not extend to the FAA's making a judgment one way or the other with respect to the calculation of the 65 CNEL under California state law, nor does it constitute acceptance of Long Beach's proposed criterion noise level.

F-1 Flight training/practice should not be prohibited.

No Action Required. This is not a measure for FAA determination under Part 150. It is a determination by Long Beach not to pursue this measure.

F-2 Multi-engine aircraft should not depart on Runway 25R.

Disapproved. If particular multi-engine aircraft are able to meet an acceptable SENEL limit under Long Beach's Part 150 program, it would be unjustly discriminatory to preclude them from using a runway for noise reasons. If they cannot meet the limit, they would be excluded anyway, and this measure would be unnecessary for noise purposes. Furthermore, Long Beach's proposal to assign aircraft to runways by local ordinance is disapproved because this is a Federally preempted area of responsibility.

— Pilots should be encouraged, when possible, to maintain training flight tracks outside of residential

areas (within Orange/Cherry, Carson, Clark, and Willow Streets).

Approved, as a voluntary measure only.

— Install visual markets for traffic pattern boundary reference.

Disapproved, pending submission to FAA under Part 150 of sufficient information to permit an informed analysis under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. This concept is a novel idea which is largely unexplained in the data submitted with the Part 150 program. We do not know, for instance, what kind of visual markers would be installed or whether the marking would be for daytime operations only or for nighttime operations as well. Pilots are taught, of course, to navigate by reference to features on the ground, but usually such features are quite large and easily identified; i.e., a river or an outdoor theater or an expressway. To be capable of relatively easy identification by pilots, such visual markers would have to be quite large, we assume. In any event, more information about the proposal would be necessary before it could be seriously considered by the FAA. It is possible that safety concerns raised by the proposal are not capable of being adequately resolved, however. One of those concerns is the impact of traffic pattern marking on the "see and seen" principle. Pilots who are looking for markers on the ground are less likely to see conflicting traffic. As a result, such a marking system could increase the risk of mid-air collision, a result which is not acceptable.

F-3 Limit general aviation training hours (7:00 a.m.-7:00 p.m. weekdays and 8:00 a.m.-3 p.m. weekends/holidays) and limit runways available for training to 25L/7R, 25R/7L, unless otherwise directed by FAA Air Traffic Control.

Disapproved. FAA recognizes that this proposed ordinance is a continuation of an existing ordinance. However FAA is, for the first time, being requested to approve this measure under Part 150. The airport proprietor is advised that certain provisions of the Ordinance appear to attempt to regulate aircraft operations by dictating airspace use and air traffic management in terms of runway usage based on the purpose of a particular flight. That is a subject area which is not within the authority of an airport operation. In addition, there is a lack of submitted information concerning the contribution of training operations to the noise problem and the benefits of this measure in terms of noise reduction/compatible land use, as well as the potential for unjust discrimination against training operations which are no louder than other operations.

FAA is willing to work closely with Long Beach to determine whether the objectives of this measure can be obtained consistent with these concerns.

G Investigate the feasibility of an off-airport helipad.

Approved. This approval is for a feasibility study and does not constitute approval of a new off-airport helipad. FAA notes that, unless provisions are made for fuel and full service at a remote helipad, the noise between the helipad and the airport would actually increase.

H Conduct a pilot study to eliminate, through sound atttenuation, classroom aircraft noise intrusions in excess of 55 dBA.

Approved.

I-1 Create an on-going committee to monitor results.

Approved.

I-2 Consider relocation of Runway 30 landing threshold to the pavement end, if landing noise is not constraining flight activity.

Disapproved, pending submission to FAA under Part 150 of sufficient information to permit an informed analysis under Section 104(b) of the Aviation Safety and Noise Abatement Act of 1979. The noise compatibility benefits of this proposed measure are not clear; indeed, there is indication in Long Beach's documentation that there may be additional noise impact resulting from the measure. A disapproval under Part 150 is not intended to limit consideration of this measure for other purposes, such as increasing airfield flexibility.

I-3 Study the impact of engine runup noise on the community.

Approved.

13. The City of Long Beach should put itself on a course of self-reliance regarding operation of the Airport, and therefore should no longer accept Federal funds for airport purposes.

No Action Required. This is not a Part 150 program recommendation for FAA determination. It is a determination by Long Beach, which is within the purview of any airport proprietor, no longer to request Federal aid.

APPENDIX H

Memorandum From Dwight E. Bishop — Noise Control Program Run-A

Date: June 5, 1985

AIRPORT NOISE COMPATIBILITY TASK FORCE

MEMORANDUM

June 5, 1985
TO: Task Force Members
FROM: Dwight E. Bishop
SUBJECT: NOISE CONTROL PROGRAM — RUN A

OPERATIONAL CONDITIONS

Airlines

Aircraft mix:
FY 1984 and others. See Tables 1 and 2

Stage length:
See Tables 1 and 2.

Runway Utilization:
BAe 146 aircraft assigned to Runway 25L. Other air carrier aircraft assigned to RW 30 with FY 1984 utilization (90% takeoffs and approaches on RW 30, 10% on RW 12).

Curfew:
Current rules

Number of operations:
A fixed limit on number of operations on RW 30 and RW 25L:
"No more than 2 noise events per hour that interrupt classroom activities between 7 am and 10 pm"

1. Using 65 dB maximum A-level as the classroom criterion,* aircraft likely to produce maximum A-levels of more than 75 dB outdoors at nearest schools were counted as producing a classroom interruption. This criterion generally excludes Citation 1 and 2 and Challenger 600 business jet aircraft, but counts all other jet aircraft as potentially producing classroom interruptions.

2. The "2 events per hour" was interpreted as allowing 30 noise events that could produce classroom interruptions between 7am and 10pm.

General Aviation

Type of Aircraft:

FY 1984 mix for FY 1984 baseline. Replace turbojets with turbofans for all runs. (see Table 1).

Operations:

Same number of total operations as in FY 1984.

Runway Utilization:

All business jet operations on Runway 24L

Curfew:

Current rules

Training Flights:

Same conditions as existing.

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*D.E. Bishop "Noise Criteria for Classrooms", Memo dated 5 June 1985.

Industrial/Charter/Military

Type of Aircraft:

FY 1984 mix for FY 1984 baseline. Replace all B727, DC-8 and B707 charters with MD-80 aircraft for other runs. See Table 1.

Operations:

Same number of operations as in FY 1984.

Runway utilization:

Same as FY 1984.

Curfew:

Same conditions as existing.

LAND USE CONTROLS

Land Use Changes

None

Other Land Use Actions

None

RESULTS

Noise Impacts

FY 1984 operations resulted in an average of 30.3 takeoffs or landing noise events per day on Runway 30/12. This just slightly exceeds the 30 event limit. Hence, the 30 event limit does not impose any significant reduction in jet flights on Runway 30 over FY 1984 operations.

Shifting business jet flights to Runway 25L would permit an increase in air carrier flights on Runway 30 and an increase in passengers carried, with the resulting

CNEL at the nearest residential area exceeding 70 dB (see Table 3).

Elimination of the noisiest jets (Mix A') would result in a similar number of flights and passengers carried, with a reduction of CNEL at the nearest residence to less than 65 dB.

Air carrier Mixes B and C includes BAe 146 aircraft, operating on RW 25L. With limits to 30 noise events on each runway, the total number of air carrier flights would increase to more than 46 per day, with CNEL values at the nearest residence in the range of 63 to 66 dB.

Operations

As noted in Table 3, the number of air carrier flights per day would vary from FY 1984 levels (15.66 per day) upwards to 45 plus per day (the latter assumes use of RW 25L for BAe 146 operations).

Passenger Service

The passenger service levels would vary from FY 1984 totals (approximately 1.16 MAP) upwards to 2.9 MAP dependent upon mix.

Comments

1. Imposing CNEL limits at the nearest residential area of 65 dB would reduce the number of flights for air carrier mixes similar to FY 1984, and Mix A or Mix B. Thus, application of a CNEL limit would generally achieve results similar to the limits on total noise events.

2. Considering that noise events exceeding 75 dB can be produced by air carrier, general aviations, charter, industrial or military jet flights, there does not appear to be any feasible way of restricting such flights throughout the day to a constant rate of 2 per hour or less. Bunching of flights could not be avoided.

APPENDIX I

Memorandum From Dwight E. Bishop — Initial Look at Noise Impact of Jet Aircraft Takeoffs on Runway 25L

Date: March 13, 1985

MEMORANDUM

TO:	Airport Noise Compatibility Advisory Task Force
FROM:	Dwight E. Bishop
SUBJECT:	Initial Look at Noise Impact of Jet Aircraft Takeoffs on Runway 25L (BBN Project 165196)
DATE:	13 March 1985

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1. INTRODUCTION

This memo takes an initial look at the noise impact of jet aircraft takeoffs on Runway 25L. As in previous memos, the analysis is presented in terms of numbers of operations, or numbers of passengers carried, allowed in achieving a 65 db CNEL value at the nearest noise sensitive area (Burroughs School).

2. RUNWAY LENGTH CONSIDERATIONS

Runway 25L/7R is currently 5,420 feet long, but the airport staff has indicated that the runway could be extended to approximately 5,700 feet without major problems. This length is large enough to handle most business jet aircraft and many short and medium haul jet transport aircraft. Runway 25L compares in length with

the active runways at John Wayne and Burbank Airports as follows:

Airport	Runway	Length, Ft.
Long Beach	25L	5420(5700)
John Wayne	19R	5700
Burbank	15	6900
	7	6000

Both the John Wayne and Burbank Airports handle short and medium haul aircraft (with some weight restrictions for some aircraft).

3. NOISE COMPARISONS

As in previous memos, the noise contribution of different aircraft were evaluated at the nearest noise sensitive area (Burroughs School) exposed to noise from takeoffs on Runway 25L. The noise contributions from operations on other runways were neglected in this analysis, hence, the figures presented are somewhat optimistic but provide a good basis for first-cut comparisons.

The takeoff flight paths for departing business jet and air carrier aircraft were assumed to be a takeoff on runway heading until reaching a height of 1,500 feet with aircraft then turning to headings of 180 or 270 degrees.*

Table 1 summarizes the basic information utilized to estimate the maximum number of takeoffs and passengers per year for each aircraft considered in the analysis, assuming only that type of single aircraft operated on Runway 25L. The assumptions as to the day/evening/night factor and load factors are listed in the table. Figures 1 and 2 compare the numbers of departures, while Figure 3 shows the number of passengers per year

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*Mr. Jerry Yocum, FAA Fower [sic] Chief, has indicated that the turns could be instituted at heights from 800 to 1,500 feet. Further study may indicate desirability of turning at a height of less than 1,500 feet.

for the air carrier aircraft. Figure 1 truly illustrates the large difference in noise between the general aviation propeller aircraft and the noisy business jet aircraft. Note that the noise from the small Citation 1 and 2 business jet is comparable with that from typical 2-engine propeller aircraft.

Runway 25L is currently used heavily by general aviation propeller aircraft, with the runway handling approximately 42% of all daily departures of general aviation propeller aircraft. Table 2 and Figure 4 show the noise contributions by non-carrier aircraft (based on totals of operations for FY 1984). The noise contibutions from the general aviation propeller aircraft amount to approximately 15 equivalent flights (out of a total of 100 to reach a 65 dB CNEL).

If 50% of the FY 1984 business jets were diverted to Runway 25L, the number of equivalent flights would approximate 116, increasing the CNEL to over 65 dB.

If the "noisy" turbojets were replaced with quieter turbofan business jets, the number of equivalent flights (current propeller flights plus 50% of business jets) would approximate 33 (producing a CNEL of about 60 dB). Assuming a total CNEL of 65dB, approximately 65 equivalent flights would be available for air carrier takeoffs.

Table 3 lists the numbers of takeoffs per day and passengers carried for various air carrier aircraft and fleet mixes that could be accomodated for a limit of 65 equivalent flights. The numbers of takeoffs per day could

range from approximately 13 per day (MD-80 short range) to an excess of 74 for the BAe 146.

4. CONCLUSION

This analysis indicates that there could be substantial numbers of business jet and/or carrier operations on Runway 25L before the CNEL 65 dB contour extended into the nearest noise sensitive areas (schools and residences). However, it should be noted that a sizable number of jet takeoffs on Runway 25L would result in a considerable increase in noise levels in areas not currently exposed to noise from operations on 25L. New neighborhoods would be exposed to noise from jet aircraft.

The next analysis steps should include:

(a) A more detailed review of air traffic procedures for handling jet aircraft on Runway 25L.

(b) A more thorough study of flight tracks to minimize noise and air traffic impacts.

(c) A noise contour study that would reflect the noise contribution of operations on Runway 25L plus other runways and the added noise impact on the approach path to Runway 30 for the additional jet takeoffs on Runway 25L.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On July 10, 1987, I served the within Joint Brief of Respondents in Response to Petition for Certiorari in re: "City of Long Beach vs. AirCal, Inc." in the United States Supreme Court, October Term 1986, No. 86-2002;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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All parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on July 10, 1987, at Los Angeles, California

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